STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: February 1, 2012

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: H.B. 200 [State Constitution Requirement of Voter Identification]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 200 which would require every voter to present a "current and valid picture identification" from a list of 5 government sources. If the government photo identification lacks a signature, an additional identification bearing a signature must also be presented. If either is lacking, the voter can only vote a provisional ballot whose validity is later reviewed by an undefined "Board of Canvas". The law covering processing of provisional ballots is extremely cumbersome. Title 15 Del.C. §4948. SCPD opposes the proposed legislation and has the following observations.

First, under current law, if a voter appears at his/her election district to vote, and lacks identification, the voter can "sign an affidavit or affirmation that the voter is the person listed on the election district record". Title 15 Del.C. §4937(a). Challenges are resolved promptly by "the opinion of a majority of the inspector and judges." Title 15 Del.C. §4939. There is a "hefty" deterrent to fraudulently voting since it is a misdemeanor subject to both a fine and up to 2 years in prison. Title 15 Del.C. §5128. Prosecution for perjury is also authorized. Title 15 Del.C. §5135. There is no evidence that this system is not effective.

Second, consistent with the attachments, voter identification laws have a disproportionate effect on individuals with disabilities and the elderly. Individuals in nursing homes or institutions such as the Stockley Center have little need for a current photo identification or ability to sign. Moreover, Delaware's current Constitution (Article V, §2) at least contains an authorization for individuals to vote who cannot sign their name "by reason of physical disability". H.B. 199 is categorical and includes no such accommodation for individuals lacking a proper signature due to quadriplegia, orthopedic impairment, or sensory impairment. Cf. Title 15 Del.C. §4937(b).

Third, Delaware election officials encourage voting by individuals with disabilities. See, e.g., attached October 10, 2010 News Journal article, "Determined Voter Casts Her Ballot from Bed". Nevertheless, the voting rate for Delawareans with disabilities is only 58.7% versus a 68.4% rate for Delawareans without disabilities. Additional hurdles to voting will only exacerbate that difference.

Finally, the bill is technically infirm since it creates conflicts with other statutes, including Title 15 Del.C. §§4937 and 4948.

Thank you for your consideration. Please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: The Honorable Jack A. Markell
Ms. Elaine Manlove
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council
hb 200 state constitution requirement 1-27-12

Study predicts voting laws will change political landscape

By Krissah Thompson, Published: October 3

More than 5 million voters could be affected by recent changes to state voting laws as the nation prepares for next year's presidential election, according to a study released Monday.

The report by the New York University School of Law's Brennan Center for Justice analyzed 19 laws and two executive orders that were issued in 14 states this year in an attempt to measure their impact on individuals.

"In two out of the last three presidential elections, 5 million voters is considerably more than the margin in two out of the last three presidential elections," said Michael Waldman, executive director of the Brennan Center. "These kinds of rules matter enormously. If this is a close election, as it may well be, these voting rules can turn out to be quite significant."

The center opposes the new laws and one of the researchers involved with the report called them "wholly unnecessary."

Researchers found 3.2 million people in Kansas, South Carolina, Tennessee, Texas and Wisconsin do not have the state-issued identification that will now be required to vote. In addition, more than a million people cast ballots in 2008 during the early voting time periods that have been eliminated in Florida, Georgia and Ohio. Others voters will be impacted by tougher voting restrictions for convicted felons and laws requiring additional proof of citizenship.

This year, more than 30 states debated changes to their voting laws. A dozen passed more restrictive rules requiring voters to present state-issued photo IDs, according to the National Conference of State Legislatures, although Democratic governors in four states vetoed them. Florida and Ohio will cut nearly in half the number of days for early voting, and Florida lawmakers reversed rules that had made it easier for convicted felons to vote.

The report, which points to emboldened Republican control in state legislatures as a cause for the wave of new laws, found that the new restrictions "fall most heavily on young, minority, and low-income voters, as well as on voters with disabilities." The laws could change the "political terrain," the report warns.

Conservative groups and politicians have argued that the laws will ensure the fairness of the electoral process. Kansas Secretary of State Kris W. Kobach(R) said Kansas's new law, which requires state-issued photo IDs, makes his state's elections among the safest in the nation.

"When I was running for secretary of state, I said, 'I think we could pass a law to make most forms of voter fraud nearly impossible,' " said Kobach, who also noted that the state received 221 reports of voter fraud in 1997 and 2010, a relatively small number amid the tens of thousands of votes cast. "I ran on that and I won."

John Samples, director of Center for Representative Government with the Cato Institute, said — as Kobach's election shows — the laws are politically popular. He also argued that it might be too soon to know the full impact of the changes and suggested the Brennan Center's figure might be overstated.

"The 5 million number might be true in a general sense under the law, but the real question here is whether the imposition of the requirement would cause the person to do something different than they would have done without it," he said. "It is implausible to me that 5 million people would be deterred from voting short of physical force."

Justice Dept. rejects South Carolina voter ID law, calling it discriminatory

By Jerry Markon, Published: December 23

The Obama administration entered the fierce national debate over voting rights, rejecting South Carolina's new law requiring photo identification at the polls and saying it discriminated against minority voters.

Friday's decision by the Justice Department could heighten political tensions over eight state voter ID statutes passed this year, which critics say could hurt turnout among minorities and others who helped elect President Obama in 2008. Conservatives and other supporters say the tighter laws are needed to combat voter fraud.

Justice Department lawyers, facing intense pressure from civil rights groups to act against the new laws, are still reviewing Texas's statute.

In its first decision on the laws, Justice's Civil Rights Division said South Carolina's statute is discriminatory because its registered minority voters are nearly 20 percent more likely than whites to lack a state-issued photo ID. Under the 1965 Voting Rights Act, South Carolina is one of a number of states that are required to receive federal "pre-clearance" on voting changes to ensure that they don't hurt minorities' political power.

"The absolute number of minority citizens whose exercise of the franchise could be adversely affected by the proposed requirements runs into the tens of thousands," Assistant Attorney General Thomas E. Perez said in a letter to South Carolina officials.

South Carolina Gov. Nikki Haley (R) called the decision "outrageous" and said she plans to seek "every possible option to get this terrible, clearly political decision overturned so we can protect the integrity of our electoral process and our 10th Amendment rights."

The law, passed in May and signed by Haley, requires voters to show one of five forms of photo identification. The state can now try to get the law approved by a federal court or seek reconsideration from Justice.

South Carolina cited the need to fight voter fraud in defending the measure. Whether election fraud exists to any significant degree and how extensive it may be is the subject of a divisive national debate. Some conservatives have long argued that fraud is a serious problem, but Perez said that South Carolina's submission "did not include any evidence or instance" of fraud not already addressed by state laws.

The federal action — the first time the government has rejected a voter-identification law in

nearly 20 years — signals an escalating national legal battle over the laws as the presidential campaign intensifies. The American Civil Liberties Union and another group recently filed a federal lawsuit contending that Wisconsin's new voter-identification measure is unconstitutional.

Laws approved in Mississippi and Alabama also require federal approval but have not yet been submitted to the federal government. States can get such approval for changes to voting laws from Justice, a federal court in the District or both.

It is unclear if the four states not subject to the Voting Rights Act requirement — Wisconsin, Kansas, Rhode Island and Tennessee — will face challenges to their laws. Justice lawyers could file suit under a different provision of the act, but the department has not revealed its intentions.

The voter-identification measures, enacted mostly by Republican legislatures, also impose restrictions on early voting and make it harder for former felons to vote. The Justice Department is also reviewing electoral changes in Florida that reduce the number of days for early voting.

But it is the voter-identification laws that have aroused the most fury on the left, with some comparing them to the poll taxes once used to keep minorities from voting in the segregated South. Opponents of the new laws say they would discriminate against minorities, and others such as low-income voters, because some don't have the necessary photo ID and lack the means to easily obtain ID cards.

One study estimated that the changes could keep more than 5 million voters from the polls. But the laws have proven popular, according to some surveys. Last month, Mississippi voters easily approved an initiative requiring a government-issued photo ID at the polls.

The ACLU and other civil rights groups praised the Justice Department's decision on South Carolina's law, with NAACP President Benjamin Jealous saying it "ensures all eligible South Carolinians will have access to the ballot box in 2012 and beyond."

Jon Greenbaum, chief counsel for the Lawyers' Committee for Civil Rights Under Law, said the Justice Department "applied the law faithfully here and really did an excellent job analyzing if the [South Carolina] law would have a discriminatory effect."

Supporters of the law were equally expansive in their criticism. Hans von Spakovsky, a senior legal fellow at the conservative Heritage Foundation, said the decision "was purely political and driven by ideology."

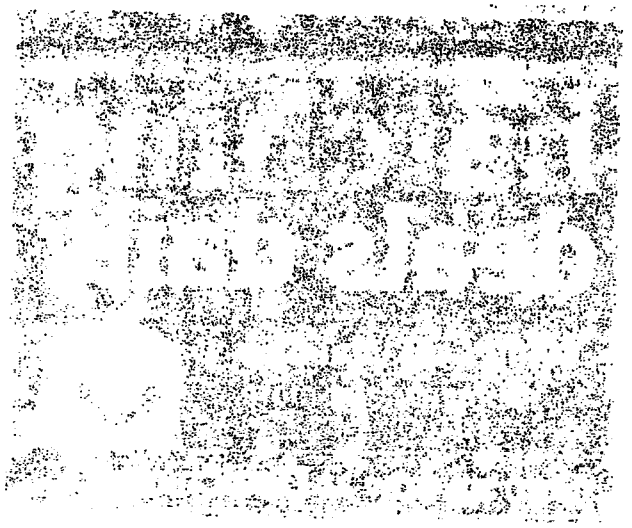
Noting that courts have found laws requiring voter identification in Georgia and Indiana to be nondiscriminatory, "they are going against their own precedents and other court decisions," von Spakovsky added.

In South Carolina, Republican Party Chairman Chad Connelly called requiring voter

identification "a common-sense safeguard. ... The Obama administration has once again decided that Washington knows best."

The Justice Department's decision came after Attorney General Eric H. Holder Jr. signaled a tough stance on the new state laws in a Dec. 13 speech. He expressed concern about the measures, saying, "Are we willing to allow this era — our era — to be remembered as the age when our nation's proud tradition of expanding the franchise ended?"

At the same time, Holder vowed not to let politics affect his department's review of the laws. "We're doing this in a very fair, apolitical way," he said in a recent interview with The Washington Post. "We don't want anybody to think that there is a partisan component to anything we are doing."



Determined voter casts her ballot from bed

NCCo elections chief delivers it to hospital

By CHAD LIVENGOOD
The News Journal

Martha Brown planned to go to the polls Tuesday to vote for Chris Coons and other Democrats.

"I think this is such an important election," the 68-year-old Newark woman said. "Being a Democrat, we are under siege. It's like the French Revolution – they're pulling out the guillotine."

But after she suffered a seizure last week, doctors discovered a tumor in her brain, leaving Brown hospitalized.

It was too late for Brown, who has battled cancer for 12 years, to get an absentee ballot mailed to her before the election. Friends and family were unsuccessful in obtaining a ballot for her, because it has to be done in person, she said.

Just hours before she went into surgery Thursday afternoon, New Castle County Elections Director Anthony Albence hand-delivered an absentee ballot to Brown at Christiana Hospital.

Albence said his office takes absentee ballots each year to a handful of voters who face extenuating circumstances, such as Brown's pending brain surgery.

"Certainly in a situation like this, it's a pretty critical case," Albence said. "If we can do it, we certainly try."

Brown thanked Albence before casting her vote.

Getting to have her say in the midterm election brought a little comfort to Brown, who has been active in politics her entire adult life.

"I hope someone looks at this story and says, 'If that woman can vote, I should vote,' " Brown said.

Contact Chad Livengood at 324-2832 or clivengood@delawareonline.com.

The News Journal/CHAD LIVENGOOD

New Castle County Elections Director Anthony Albence explains the absentee ballot to Martha Brown at Christiana Hospital on Thursday.

APPENDIX II

delawareonline

October 11, 2008

Officials: Del. won't purge its voting pool

'We don't take people off rolls easily'

By JAMES MERRIWEATHER

Even as a new report raises concerns that some states may be illegally preventing would-be voters from casting ballots, Delaware officials are assuring residents that the First State is, if anything, over-accommodating in making sure everyone can vote who is legally able.

A report released this week by The New York Times found that, for all the publicity about surging interest in this year's presidential election, officials in some swing states are purging two voters from their rolls for every one they add -- and may be doing so in ways that violate federal laws, albeit unintentionally.

On Friday, Delaware Elections Commissioner Elaine Manlove offered assurances that eligible voters here are not being barred from voting in big numbers. If anything, she said, state election officials are erring on the side of full participation in the Democratic process.

"We do not take people off the rolls easily," Manlove said, "and I worry that the rolls are bloated because of that."

Today is the deadline to register to vote in the Nov. 4 general election. Today also offers the last chance to change party affiliation until the day after the election.

Over the three-month period beginning July 1, the number of registered Democrats in Delaware increased by 6,220 voters -- up to a total of 264,167. At the same time, the Republican Party picked up just 617 registrants, bringing its count to 180,087. Overall, about 8,000 new voters have registered in the state in the past three months.

The Times' review focused on apparent problems in six swing states -- Colorado, Indiana, Ohio, Michigan, Nevada and North Carolina -- that seem to be violating federal law by either purging their voter rolls too close to the general election or by using Social Security databases as a primary voter-eligibility check, which can result in registrations being improperly deemed invalid.

None of that happens in Delaware, Manlove said.

The state neither conducts pre-election purges nor uses Social Security data to verify new-voter registrations.

"We won't do any purges until after the election, because we need that general election to be the second election that you didn't vote," she said. "We need you to not vote in two elections before we can take you off."

Failure to vote in two consecutive elections used to be Delaware's only requirement for purging voters, but the federal "motor-voter" law, enacted in 1993, barred states from disqualifying voters merely for non-participation. Since then, Manlove said, the state doesn't purge until two pieces of mail sent to such voters are returned as undeliverable.

Even then, motor vehicle records are checked and postcards are sent out in an effort to verify voters as eligible. If someone on the registration rolls in Delaware registers in another state or dies in another state, that state is supposed to notify Delaware, but Manlove isn't confident that always happens.

"That's some of the things that cause people to stay on the rolls when they don't belong on the rolls," she said.

About five years ago, Manlove said, the Social Security database was used for the first and only time in Delaware to verify voter eligibility.

"We found some glitches, and I'm sure a few people were purged," she said. "But if there were any questions on Election Day, we let them go ahead and vote."

To register in the first place, Delaware residents must produce a state-issued identification card or a document that confirms residency, such as a lease or utility bill. If people who register by mail fail to provide documentation, their application is flagged and they'll be asked for it when they show up to vote.

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APPENDIX III

Enhancing Voter Participation of People with Disabilities

Daniel Atkins
Legal Advocacy Director of the Disabilities Law Program
Community Legal Aid Society, Inc.

In the 2008 federal election, 14.7 million people with disabilities around the country voted. That is the good news. The bad news is that the voter turnout rate for people with disabilities was 7% less than the rate for people without disabilities. In Delaware, the rate for people with disabilities was 58.7%, and for people without disabilities, 68.4%, meaning Delaware did worse than the national average in helping people with disabilities vote. Numerous factors contribute to low voting rates among people with disabilities—inaccessible polling places and voting machines are just two problems that could be alleviated with better use of existing technology. In 2008, the federal General Accounting Office found that only 27.3% of polling places had "no potential impediments to voting." In other words, nearly three-quarters of all polling places have at least the potential to present accessibility challenges to people with disabilities.

Voting is a fundamental civil right exercised and enjoyed by citizens and a bedrock principle in the United States. As such, numerous federal laws have been enacted that specifically address the voting rights of US citizens with disabilities. The Voting Rights Act of 1965 recognized for the first time that the law must sometimes be used to protect this fundamental right by explicitly permitting voters who need assistance due to disability or illiteracy to receive help voting from a person of their choice. The Voting Accessibility for the Elderly and Handicapped Act of 1984 requires polling places to be physically accessible, unless it is impossible to do so, and requires the reassignment of voters to accessible polling places if the voter requests a new site in advance. The Americans with Disabilities Act of 1990 (ADA) requires state and local government programs, which include voting, to be accessible. This, unfortunately, does not mean that all voting places must be accessible, but rather that if voting is taking place in a state or local government building and that polling place is inaccessible, a voter with a disability must be provided with a place or method of voting that enables him/her to vote. The ADA also requires that polling places in a "place of public accommodation" (which means a place that is open to the public, but not a government building) must make readily achievable modifications to facilitate voting. Furthermore, the ADA requires all new buildings built after 1992 to be fully accessible.

In the 2008 election, the Federal Election Commission estimated that between 20,000 and 120,000 polling places were inaccessible. Eight percent of voters with disabilities experienced some problem voting, including polling place accessibility, functionality of machines, or readability of ballots. Among people with disabilities, people with hearing impairments have the highest turnout, and not surprisingly, people who need assistance leaving their homes have the lowest turnout. This is due not only to inaccessible polling places but also to a lack of accessible transportation on Election Day.

In 2002, the Help America Vote Act (HAVA) created a new federal agency clearinghouse for voting issues, provided funds to improve voting administration and systems, enacted minimum accessibility standards for states, and gave money to Protection and Advocacy agencies like the Disabilities Law Program of Community Legal Aid Society, Inc. (DLP of CLASI) of Delaware to enhance voting participation by people with disabilities. As a result of HAVA, all polling places and voting systems must be accessible to individuals with disabilities. Election officials must make reasonable accommodations and modifications to help individuals vote. Accommodations include architectural modifications such as the installation of exterior ramps, ballot changes such as large print, and wheelchair accessible voting booths at polling places. Modifications may include giving a voter extra time, permitting an "X" or stamp in lieu of a signature, or letting a helper accompany a voter into the voting booth. Most importantly, each polling place must have at least one Direct Recording Electronic Voting System or other system equipped for people with disabilities. Delaware uses the Guardian Electronic 1242, which has a tilt feature that changes the ori-

http://www.dati.org/newsletter/issues/2010v2/index

Enhancing Voter Participation of People with Disabilities

entation of the voting system for people who cannot stand, as well as a system known as "ADAM," for voters with visual impairments.

Voting has become increasingly sophisticated, though the pace of such change is slow. One recent national survey revealed the following:

National voting systems in use	National numbers tell the story
punch cards	34%
lever systems	19%
optical scanners	27%
computer systems	9%
paper ballots	2%
hybrid	9%
discarded ballots due to voter error	2%

Regardless of a voter's disability, the voting process can be quite challenging. Punch cards, for example, are particularly problematic for voters with vision impairments. Voting can occur in more ways than entering a voting booth—absentee voting, voting by mail, and curbside voting as an alternative to machine voting. While email, absentee, and mail voting are a trend, some individuals with disabilities understandably want the complete experience of going to the polls on Election Day. However, among voters with disabilities, 59% voted at the polls, compared to 71% of all voters.

The DLP of CLASI is working with Delaware state officials to improve the accessibility of voting places. The DLP monitors all federal elections, inspecting as many sites as we can to ensure that voters with disabilities are able to access their polling place and voting booth. We train poll workers, educate consumers about their voting rights, and enforce those rights when violated. If you have questions or concerns about voting, please contact your county DLP of CLASI office:

New Castle: 100 W. 10th Street, Suite 801, Wilmington DE 19801, 302-575-0690
Kent: 840 Walker Road, Dover, DE, 19904, 302-674-8500
Sussex: Georgetown Professional Park, 20151 Office Circle, Georgetown, DE 19947, 302-856-0038. ■

Delaware Division for the Visually Impaired

Jack Holloway
Communication/Outreach Coordinator
Delaware Division for the Visually Impaired

DELAWARE HEALTH AND SOCIAL SERVICES
Division for the Visually Impaired

The mission of the Division for the Visually Impaired (DVI) is "Working in partnership with Delawareans who are blind or visually impaired empowering them to be self-sufficient."

DVI provides a holistic, integrated service approach—serving over 1,000 individuals annually. Services are available to blind and visually impaired consumers from birth to death through a variety of programs. The agency works in partnership with the consumer and the community to improve the safety, education, and employment of blind and visually impaired Delawareans. One important responsibility of the agency is maintaining the Registry of the Blind.

Title 31, Section 2108, of the Delaware Code mandates that physicians report legally blind persons to DVI for inclusion on the Registry. The agency utilizes the Registry to provide important information and services to blind and visually impaired citizens. The information is confidential and being included on the Registry does not mean that the consumer must utilize any of the available services. However, being listed on the Registry ensures more timely access to services when requested.

Persons on the Registry may be kept abreast of the latest in programs and services available through mailings such as the DVI Views newsletter available in a multitude of formats—large print, CD, Braille and audio. Maintaining an accurate, up-to-date Registry is an important tool to track trends in visual impairments and demographic data, and to target services in areas of highest need. Finally, maintaining a current Registry is critical to support requests